

EXHIBIT E

1 would ask is if there's a witness who was not going to be
2 addressing one of the seven or eight prior art references that
3 you restricted Lawson to addressing in their contentions, that
4 that witness be excluded. For example, Lawson is now raising
5 the fact they want to have a witness testify about their
6 alleged prior art system, a version 6.0, their own system.
7 It's not in the court-ordered invalidity contentions, and we
8 just think this is an argument to do an end-around of the
9 Court's order.

10 It's not proper for them to, on the one hand, not
11 give us contentions about it and the other hand say they're
12 going to call a witness to address it. I don't know if that's
13 going to be Mr. Lawson, if it's going to be another witness,
14 but if it's not in what was required by the Court's order, then
15 we think this is just a kind of patent lawyer's argument to get
16 around an article three judge's ruling, and it's not
17 appropriate.

18 So other than -- anybody identified on April 9th that
19 is included in their April 9th disclosures as ordered by the
20 Court, I'll go depose and we'll move forward on this case. I
21 would ask the Court's indulgence because I might need to name a
22 rebuttal witness or two, and I could probably do that by close
23 of business tomorrow, but I might need to do it by Monday
24 morning, because, you know, I did not anticipate having to take
25 depositions in, you know, Tulsa, Oklahoma, and Montana and

1 So it's actually just the opposite of that, but it
2 is, obviously, a little unique when it's Lawson's own system
3 here compared to some of this third-party prior art, so it is
4 relevant to give the scope and contents of the prior art, but
5 also, you know, there's a bit of a dilemma here because a lot
6 of these features we don't think infringe.

7 They don't infringe in our current product, they
8 don't infringe in the old product either. They are just
9 different, but we should be able to at least explain to the
10 jury, look, whether you think this feature satisfies this
11 element or not doesn't really matter because Lawson has been
12 doing that since the 1980s, and we want to be able to have the
13 right to say that, at least to give the jury that context, and
14 we made that clear.

15 Maybe they think it's a good point, so they decided
16 they wanted to try to withdraw that deposition notice from over
17 three weeks ago, but the issue here isn't prejudice or delay or
18 anything else. It's that they don't want us to put in some
19 good testimony.

20 THE COURT: The issue is whether you told them that
21 you weren't going to put it in.

22 MR. McDONALD: We never said that. We made it very
23 clear, it's background, it's prior art. It's also relevant to
24 willful or intent-based issues. It's relevant to the existence
25 of non-infringing alternative technologies, because certainly a

1 MR. McDONALD: We would be bringing it to Virginia.

2 THE COURT: Well, I'm not sure he's going to be
3 allowed to testify, but I'll have to abide the event and let
4 you all brief that later. You can depose him, Mr. Robertson.
5 If you need some extra time because of all these late
6 witnesses, you are certainly -- I'll extend the time for you.

7 MR. ROBERTSON: I understand, Your Honor. I
8 appreciate that. Obviously we think that, you know, Mr. Lawson
9 should have sprung to their mind immediately, and, you know,
10 but, again, I think they're trying to backdoor this Lawson 6.0
11 version.

12 THE COURT: The Lawson 6.0 version is not in as prior
13 art unless it was listed among the prior art that was filed on
14 April 9th. Was it or wasn't it?

15 MR. ROBERTSON: No, it wasn't, Your Honor.

16 THE COURT: Well, that's that simple.

17 MR. McDONALD: We dispute that, Your Honor. The
18 document will speak for itself. I understand you can't decide
19 that now when we're both saying opposite things.

20 THE COURT: I have to see more about it, but I can
21 tell you one thing. If it's not in that answer, that
22 disclosure, it's not coming in. I'll leave it for another day,
23 a motion in limine to be dealt with or a motion later in
24 connection with summary judgment or whatever I have to do to
25 consider what it is the facts may be on that particular

1 question, but the bottom line is if he wasn't told -- if he
2 wasn't -- if that system wasn't disclosed, there's going to be
3 no discussion about it. All right -- as prior art. All right,
4 what else? Anything else?

5 Basically then we've resolved the disputes; is that
6 right? You're going to go take the depositions. Do you want
7 some more time, Mr. Robertson?

8 MR. ROBERTSON: Yes, Your Honor. In fact, what I'd
9 like, with the Court's indulgence, is I need to caucus with
10 some of my colleagues. There may be two or three rebuttal
11 witnesses to the witnesses that Your Honor has permitted the
12 depositions to go forward that may need to be called, because
13 they dispute what some of these individuals will be
14 representing about some of the prior art in the systems that
15 are involved.

16 THE COURT: Okay.

17 MR. ROBERTSON: Obviously if I had the opportunity to
18 take the depositions earlier, I might have uncovered additional
19 witnesses, but I'll have to see what comes out in the
20 depositions as I move forward, Your Honor, and I'll bring that
21 to the Court's attention at the earliest opportunity.

22 So I guess that's where we find ourselves. We've got
23 to wrap up. I do need a little bit more time, Your Honor, in
24 order to get this done, and my expert report on validity is due
25 June 3rd, and apparently I'll be taking depositions through